

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: William J. RABATSKY 550514

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2502

William J. RABATSKY

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 C.F.R. 5.701.

By an order dated 11 July 1986, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri, suspended Appellant's license for three months, remitted on twelve months probation upon finding proved the charge of misconduct. The specification found proved alleged that on or about 26 June 1985, Appellant, while serving as operator aboard the M/V JOHN M. SELVICK, under the authority of the above-captioned license, operated the vessel and its tow on Lake Michigan during a period of darkness without ensuring that the tow was equipped with adequate navigational sidelights as required by Rules 22 and 24 of the Inland Navigational Rules.

The hearing was held at Chicago, Illinois on 20 March 1986. At the hearing, Appellant was represented by professional counsel and entered a plea of denial to the charge and specification.

The Investigating Officer introduced in evidence ten exhibits and the testimony of one witness. In his defense, Appellant introduced in evidence five exhibits, his own testimony, and the testimony of two additional witnesses.

After the hearing, the Administrative Law Judge rendered a decision concluding that the charge and specification had been proved and entered a written order suspending all licenses and certificates issued to Appellant for three months remitted on twelve months probation.

The Decision and Order was issued on 11 July 1986 and was served on Appellant on 14 July 1986. Appeal was timely filed on 11 August 1986 and perfected on 15 September 1986.

On appeal, the Vice-Commandant set aside the charge and specification of misconduct, vacated the suspension and remanded the case to the Administrative Law Judge based on the failure to rule upon the proposed findings and conclusions submitted by Appellant. The decision of the Vice-Commandant remanding the case was dated 10 February 1987 (Appeal Decision 2444 (RABATSKY)).

The Administrative Law Judge issued rulings on the proposed findings and conclusions on 13 March 1987. However, the Administrative Law Judge failed to reinstate the original Decision and Order and failed to incorporate by reference the rulings on Appellant's proposed findings and conclusions that were issued on 13 March 1987 as required in 46 C.F.R. 5.709(d). On 10 April 1987, counsel for Appellant submitted a supplemental appeal brief to the Commandant.

The Administrative Law Judge issued a subsequent ruling on 12 April 1988 reinstating the Decision and Order of 11 July 1986 and incorporating by reference the rulings on Appellant's proposed findings of fact and conclusions.

Appellant gave timely notice of appeal relative to the

12 April 1988 order and submitted an additional supplemental brief on 9 June 1988. The case is now properly before the Vice-Commandant on appeal.

FINDINGS OF FACT

Appellant is the holder of a Coast Guard license which authorizes him to serve as mate of steam and motor vessels of any gross tons upon the Great Lakes, and as First Class Pilot for steam and motor vessels of any gross tons on the Great Lakes from Duluth, MN to Gary IN, and Buffalo, NY.

On 26 June 1985, Appellant was serving as operator aboard the M/V JOHN M. SELVICK, an uninspected towing vessel 112 feet in length which was towing the barge CMS 751, an inspected ocean freight barge 180 feet in length.

Appearance: Harold L. Witsaman, 135 S. LaSalle St., Chicago, IL 60603.

BASES OF APPEAL

This appeal (dated 9 June 1988) has been taken from the order initially imposed by the Administrative Law Judge on 11 July 1986 and subsequently reinstated on 12 April 1988. Appellant has advanced several bases of appeal, however; because of the disposition of the case, only the following basis is discussed.

Appellant asserts that the Administrative Law Judge erred by modifying and rejecting some of Appellant's proposed findings without providing adequate reason or discussion for the modification or rejection.

OPINION

Appellant is correct in his assertion. Title 46 C.F.R. §5.501(a) recognizes that Suspension and Revocation Hearings are bound by the requirements of the Administrative Procedure Act. 5 U.S.C. §551 et. seq. Title 5 U.S.C. §557(c) states in pertinent part that:

. . . the parties are entitled to a reasonable opportunity to submit. . .
(1) proposed findings and conclusions;
or (2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions;
and (3) supporting reasons for the exceptions or proposed findings or conclusions.
The record shall show the ruling on each finding, conclusion, or exception presented.
(emphasis supplied)

In this case, the Administrative Law Judge in the RULINGS ON PROPOSED FINDINGS OF FACT, 13 March 1987, ruled as follows:

1. Proposed findings 1-8, 14, 17, 22, 24, 27 and 28 are accepted and where pertinent will be found in substance in the Findings of Fact.
2. Proposed findings 12, 13 and 25 are accepted with modification and where pertinent will be found in the Findings of Fact.
3. Proposed findings 9, 10, 15, 16, 20, 21, 29 and 30 are rejected in part and where accepted and pertinent, will be found in the Findings of Fact.

4. Proposed findings 11, 18, 19, 23, 26, 31-55 are rejected.

5. Proposed conclusion 1 is accepted and 2 through 4 are rejected.

The aforementioned statement of ruling is deficient in failing to satisfy the minimum requirements of the Administrative Procedure Act. The Administrative Law Judge, at a minimum, should have issued a brief statement specifying those portions of the proposed findings that were accepted, those that were rejected, and the reasons therefor. See, Appeal Decision 2195 (FORREST). In FORREST, supra, the issue involved an Administrative Law Judge's vague ruling regarding a charged specification. However, the rationale for requiring a more detailed ruling is the same, that is, to give notice to the parties and reviewing authority of what consideration and reasoning was employed by the Administrative Law Judge. Those proposed findings and conclusions rejected outright or modified should have included a brief statement setting forth the grounds for that action.

Title 5 U.S.C. §555(e) states in pertinent part:

Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial. (emphasis supplied)

This requirement was addressed in Appeal Decision 2311 (STRUDWICK) and Appeal Decision 2315 (FIFER). Even though those cases involved an Administrative Law Judge's denial of a request for a temporary license, the rationale and requirement applies no less to the case and circumstances considered herein since a "request" in the form of proposed findings and conclusions was made by Appellant during the course of the administrative proceedings.

While the failure to properly rule upon proposed findings and conclusions may be remedied by remanding the case to the Administrative Law Judge for modification of the Decision and Order, this case has been previously so remanded. Moreover, over four years have elapsed since the original Decision and Order was issued in this case. Given these factors, the technical nature of the charge and the probationary sanction which was imposed, both equity and reason dictate that another remand would serve no useful purpose.

CONCLUSION

The rulings of the Administrative Law Judge regarding Appellant's proposed findings and conclusions are in error.

ORDER

The Decision of the Administrative Law Judge is REVERSED, the order VACATED, and the case DISMISSED

MARTIN H. DANIELL
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 31 day of July, 1990.

S&R RABATSKY

2. PLEADINGS

2.60 Proposed findings; ALJ's ruling on

12. ADMINISTRATIVE LAW JUDGES

12.51 Proposed findings of fact and conclusions of law;
Failure of ALJ to rule as error

12.51 Proposed findings of fact and conclusions of law;
Failure to properly rule may be reversible error

12.52 Proposed finding of fact and conclusions of law;
ALJ's incomplete or partial ruling or
modification as error

HEARING PROCEDURE

3.44 Due process
Rulings on proposed findings and conclusions are required as matter of
due process.

STATUTES CITED: 46 USC 7702; 5 USC 551 et seq.

REGULATIONS CITED: 46 CFR 5.501; 46 CFR 5.701; 46 CFR 5.709(d).

CDA's CITED: Appeal Decision 2195 (FORREST); Appeal Decision 2315
(FIFER); Appeal Decision 2311 (STRUDWICK); Appeal Decision 2444
(RABATSKY).

***** END OF DECISION NO. 2502 *****